

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2011

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: March 16, 2011

TO: House Finance Committee

FROM: Sandra Johnson
Fiscal Research Division

RE: House Bill 129 (Unknown Edition)

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>

REVENUES ***No Fiscal Impact on Current Municipal Broadband Systems***
Payment in Lieu of Taxes Estimated at \$18.98 per Subscriber for Future Systems

EXPENDITURES

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: North Carolina Department of Revenue; North Carolina Department of State Treasurer, Local Government Commission

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: House Bill (HB) 129 implements new regulatory, public information, and financial requirements for cities and joint agencies providing communication services to the public for a fee. Four cities/joint agencies, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson

(Greenlight), Mooresville-Davidson (MI Connection), currently offer municipal broadband services that could fall within the purview of HB 129. The bill, however, specifically exempts these groups by exempting entities providing telecom services prior to January 1, 2011.

The new regulations set forth in HB 129 require that future municipal broadband companies:

- Comply with all State, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government (PEG) channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards set forth in HB 129 require that municipal broadband companies:

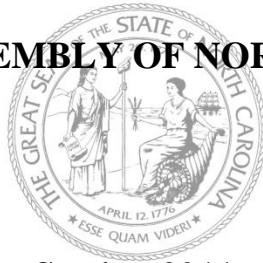
- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspaper and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

The new financial standards set forth in HB 129 require that municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the State payments in lieu of taxes (PiLoTs), an amount set by the Department of Revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

ASSUMPTIONS AND METHODOLOGY: Should HB 129 be enacted, newly operational municipal broadband companies will be required to make payments in lieu of taxes (PiLoTs) of roughly \$202,000 annually. PiLoTs will serve as a significant barrier to entry for municipal broadband companies. The PiLoT estimates are based on information provided by the North Carolina Cable Telecommunications Association. According to the association, private telecommunication providers pay roughly, \$19 per subscriber in State and local taxes. Table 1 provides a breakdown of the estimated state and local taxes paid by revenue type.

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Table 1: Payment in Lieu of Taxes for Public Entities Providing Communication Services

Tax	Description	Estimated Tax Revenue per Subscriber
Sales and Use Tax	Governmental entities would no longer be eligible to receive sales and use tax refunds under G.S. 105-164.14(c) for tangible personal property utilized in providing communication services.	\$2.07
Corporate Income Tax	Income generated from providing communication services would no longer be eligible for the income tax exemption for governmental units provided under G.S. 105-103.11, but subject to the 6.9% corporate income tax as described in G.S. 105-103.3.	\$2.91
Franchise Tax	G.S. 105-122 levies a franchise/privilege tax on corporations at a rate of \$1.50 per \$1,000 on one of three bases: 1) the profits apportioned to the State, 2) 55% of the value of real property owned in the state and subject to local property tax, 3) the book value of real and tangible personal property less any debt used to acquire real property in the state.	\$2.21
Property Tax	Government entities would be required to remit taxes on real property (buildings, land, etc.) used in conjunction with providing communication services.	\$11.79
Total Tax Due Per Subscriber		\$18.98
Source: North Carolina Cable Telecommunications Association; Time Warner Cable		

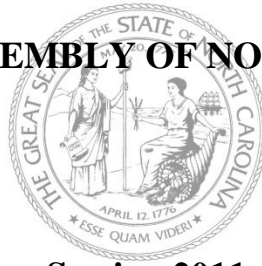
The four public broadband enterprises operating as of January 2011, Morganton (CoMPAS Cable TV), Salisbury (Fibrant), Wilson (Greenlight), Mooresville-Davidson (MI Connection), jointly serve a region covering 42,761 households. Table 2, provides a snapshot of the regions in which these systems operate, years of operation, number of households served, as well as income and assets for the 2010, fiscal year. As illustrated, only one system, CoMPAS, in Morganton, operated at a net profit during the 2010 fiscal year. CoMPAS began providing telecommunication services in 1992, financing the system's construction through debt and revenue from other utility services. The city upgraded the system in 2004 using funding provided through low interest debt called certificates of

participation (COPs). Morganton made its final COPs payment in December 2010 and expects to generate roughly one million dollars in net income annually in future years.

Table 2. Financial and Customer Data on Existing Municipal Broadband Providers, 2010

Provider	City Detail	Length of Operation	Certificates of Participation (\$ In Millions)	Number of Households in Service Area, 2010	2010 Net Income/(Loss) (\$ In Millions)	Assets (\$ In Millions)	
						Real Property (Buildings, Land)	Tangible Personal Property
Greenlight	Wilson, Wilson County, NC	2.8 years	31.80	19,799	(1.37)	0.93	8.47
Fibrant (2)	Salisbury, Rowan County, NC	3 months	29.10	7,562	(0.45)	4.59	
MI Connection (3)	Mooresville-Davidson	3.1 years	79.65	9,000 (actual); 13,489 (projected)	(5.60)	0.65	0.701
CoMPAS (4)	Morganton, Burke County, NC	Began in 1992 (infrastructure financed through utility system revenue), system upgrade occurred in 2004	7.32	6,400	0.2	Owned by Burke County	
Total			\$147.87	42,761	\$ (7.22)		

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SOURCES OF DATA:

North Carolina Department of Revenue and North Carolina State Treasurer, Local Government Commission

(2) Numbers represent projected information gathered through the Local Government Commission, Certificates of Participation Application, City of Salisbury, and Annual Financial Report City of Salisbury, "Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2010." Available at: <http://www.ci.salisbury.nc.us/finance/audit/2010/Supplemental.pdf>.

(3) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Mooresville, and Annual Financial Report for MI Connection;

(4) Numbers represent projected information gathered through Local Government Commission, Certificates of Participation Application, City of Morganton, and Annual Financial Report for City of Morganton, and conversations with Bill Harkins (CoMPAS General Manager)

TECHNICAL CONSIDERATIONS: None